

SERIAL 01120 - RFP ELECTRONIC PRODUCTS AND SERVICES

APRIL 30, 2007
CONTRACT PERIOD THROUGH ~~APRIL 30, 2005~~

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **ELECTRONIC PRODUCTS AND SERVICES**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **APRIL 17 2003**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Director
Materials Management

DL/mm
Attach

Copy to: Clerk of the Board
 Susan Varscsak, Library District
 Mirheta Muslic, Materials Management



CONTRACT FOR SERVICES PURSUANT TO RFP

SERIAL 01120-RFP MITCHELL1

This Contract is entered into this 10th day of April 2003 by and between Maricopa County Library District ("County") and a political subdivision of the State of Arizona, Participating Library and Mitchell 1, a Pennsylvania corporation ("Contractor") for the purchase of Electronic Products and Services.

1.0 TERM

- 1.1 This Contract is for a term of twenty-four (24) months, beginning on the 10th day of April 2003 and ending the 30th day of April ~~2005~~ **2007**. A participating Library may participate on an annual basis during this period upon submission of a written purchase order as set forth in Section 4.3 and an executed End User License Agreement attached hereto and incorporated herein as Exhibit "C."
- 1.2 The County may, at its option and with the agreement of the Contractor, extend the period of this Contract for additional one (1) year terms up to a maximum of two (2) additional terms. The County shall notify the Contractor in writing of its intent to extend the Contract period at least thirty (30) calendar days prior to the expiration of the original contract period, or any additional term thereafter.

2.0 PAYMENT

- 2.1 As consideration for performance of the duties described herein, County shall pay Contractor the sum stated in Final Pricing, attached hereto and incorporated herein as Pricing Agreement, EXHIBIT "A".
- 2.2 Invoices shall be prepared and submitted in accordance with the instructions provided on the purchase order. Invoices shall contain the following information: contact number, purchase order number, description of services, unit prices, and extended totals and applicable sales/use tax.

3.0 DUTIES

- 3.1 The County, Participating Library and Contractor shall perform all duties stated in the End User Agreement, attached hereto and incorporated herein as EXHIBIT "B."

4.0 TERMS & CONDITIONS

4.1 INDEMNIFICATION AND INSURANCE:

4.1.1 Indemnification.

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the County, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees and costs, arising out of a claim that the Service used in accordance with this Contract infringes the copyright, trademark, or other intellectual property rights of a third party.

The scope of this indemnification does not extend to the negligence of the County.

4.2 NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:

Maricopa County
Department of Materials Management
Attn: Director of Purchasing
320 West Lincoln Street
Phoenix, Arizona

For Contractor:
Attn: Paul Myers
14145 Danielson Street
Poway, CA 92064

4.3 REQUIREMENTS CONTRACT:

Contractor signifies its understanding and agreement by signing this document, that this Contract is a requirements contract. This Contract does not guarantee any purchases will be made. Orders will only be placed when County and Participating Library identifies a need and issues a purchase order.

Contractor shall take no action under this Contract unless specifically requested by County, which shall submit a written purchase order to Contractor requesting that work be performed or product be delivered.

4.4 ESCALATION:

Any requests for reasonable price adjustments must be submitted thirty (30) days prior to the Contract expiration date. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. If County agrees to the adjusted price terms, County shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the Producer Price Index or by performing a market survey.

4.5 TERMINATION:

County may unconditionally terminate this Contract for convenience by providing thirty (30) calendar days advance notice to the Contractor.

County may terminate this Contract if Contractor fails to pay any charge when due or fails to perform or observe any other material term or condition of the Contract, and such failure continues for more than ten (10) days after receipt of written notice of such failure from County, or if Contractor becomes insolvent or generally fails to pay its debts as they mature.

4.6 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. § 38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S § 38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

4.7 OFFSET FOR DAMAGES;

In addition to all other remedies at law or equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance under this contract.

4.8 ADDITIONS/DELETIONS OF SERVICE:

The County reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the bid price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

4.9 SUBCONTRACTING:

The Contractor may not assign this Contract or subcontract to another party for performance of the terms and conditions hereof without the written consent of the County, which shall not be unreasonably withheld. All correspondence authorizing subcontracting must reference the Bid Serial Number and identify the job project.

4.10 AMENDMENTS:

All amendments to this Contract must be in writing and signed by both parties.

4.11 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment. The County, Federal or State auditors and any other persons duly authorized by the Department upon reasonable notice and during regular business hours shall have full access to, and the right to examine, copy and make use of, any and all said materials.

4.12 AUDIT DISALLOWANCES:

If at any time County determines that a cost for which payment has been made is not in accordance with this Contract, County shall notify the Contractor in writing of the difference. County shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the difference, or to require repayment of the amount by the Contractor.

4.13 VALIDITY:

The invalidity, in whole or in part, of any provision of the Contract shall not void or affect the validity of any other provision of this Contract.

4.14 RIGHTS IN DATA:

The County shall have the use of data and reports resulting from this Contract, if any, without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

4.15 INTEGRATION

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, bids, communications, understandings, representations, or agreements, whether oral or written, express or implied.

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR

AUTHORIZED SIGNATURE

PRINTED NAME AND TITLE

ADDRESS

DATE

MARICOPA COUNTY

BY: _____
DIRECTOR, MATERIALS MANAGEMENT

DATE

BY: _____
CHAIRMAN, BOARD OF SUPERVISORS

DATE

ATTESTED:

CLERK OF THE BOARD

DATE

APPROVED AS TO FORM:

MARICOPA COUNTY ATTORNEY

DATE

EXHIBIT A
PRICING

SERIAL 01120-RFP
S027402/B0604225

PRICING SHEET

BIDDER NAME: Mitchell Repair Information Company (Mitchell 1)

F.I.D./VENDOR #:

BIDDER ADDRESS: 14145 Danielson Street, Poway CA 92064

P.O. ADDRESS:

BIDDER PHONE #: ~~858-391-5000~~ **888/724-6742**

BIDDER FAX #: ~~858-391-5266~~ **858/391-5250**

COMPANY WEB SITE: www.mitchell1.com

COMPANY CONTACT (REP): ~~Paul Myers Ryan Carnell (X-6233)~~ **Maria Garcia**

E-MAIL ADDRESS (REP): paul.myers@mitchell1.com ryan.carnell@mitchell1.com maria.Garcia@mitchell1.com

WILLING TO ACCEPT FUTURE SOLICITATIONS VIA EMAIL: ☒ YES ☐ NO

ACCEPT PROCUREMENT CARD: ☐ YES ☒ NO

REBATE (CASH OR CREDIT) FOR UTILIZING PROCUREMENT CARD: ☐ YES ☐ NO ☒ % REBATE

OTHER GOV'T. AGENCIES IN ADDITION TO THE LIBRARIES LISTED MAY USE THIS CONTRACT: ☐ YES ☒ NO

PAYMENT TERMS: ☐ 100 ☐ % ☐ 30 ☐ DAYS, OR _____

USER or PER USE PRICING

Vendor Name: Mitchell 1

Vendor Type (check one): Publisher X or Access Provider (VAR)

Product or Service: Mitchell 1's OnDemand5.com web-based automotive repair, maintenance, and estimating system

Description Of Pricing Plan: (e.g.: Number of Sites, Budget, Population Served, Terminals, etc.)

Pricing is based on number of individual locations/branches. Each of the 42 locations/branches would pay an annual license fee.

Each license comes with one simultaneous user that can be shared among participating branches (for example, 10 branches would pay for 10 licenses and be able to share the 10 concurrent users). The number of workstations/PCs with access is not limited. Remote access is not permitted.

This pricing is guaranteed if 1 of the 8 Libraries purchase the product.

License Type (check one):	Pricing		
	Product	Remote Access	Total Price
1) Unlimited			
2) Concurrent User (check A or B):			
A) Concurrent Session			
B) Active Request			
3) Transaction			
4) Other explain fully (see above)	OnDemand5.com	X	\$1,274.15

Additional Information:

	AMOUNT	or	PERCENT	NOTES
Additional Discount with 5 or more branches purchasing this product	\$1124.25 each	or	%	
Additional Discount with 20 or more branches purchasing this product	\$899.40 each	or	%	
		or	%	
		or	%	
		or	%	
		or	%	
		or	%	
Additional Discount with Central Billing for all 42 libraries	\$749.50	or	%	Total for all 42 libraries is \$31,779

Duplicate page as necessary

EXHIBIT B
MITCHELL 1 INTERNET-BASED INFORMATION SYSTEM
END USER LICENSE AGREEMENT

- A.** End User desires delivery of a Mitchell 1 “OnDemand5.com” web-based automotive repair, maintenance, and estimating system consisting of textual works, illustrations and computer programs delivered over the internet. The System will permit End User access to service and repair procedures, specifications, schematics and illustrations for the repair of automobiles, light trucks, and vans, or to use the System to estimate parts and labor cost of mechanical repairs and conduct shop management.

1. Term & Conditions:

Annual Subscription to Internet-Based Products

This Agreement is effective for an initial term of 12 months (during which time it is non-cancelable by End User), for accessing Mitchell electronic data over the internet.

2. License:

Subject to the terms and conditions of this Agreement, Mitchell grants to End User a nonexclusive and non-transferable license to access the System. The System may be used solely (i) by End User, (ii) for the purpose of accessing mechanical service and repair data on the System, (iii) or estimating mechanical parts and labor costs on the System, and/or conducting shop management. Mitchell shall retain title at all times to the System, and End User shall have no rights therein except to access the System as set forth herein. Upon expiration of the system subscription, End User will not be entitled to technical or content support.

3. Mitchell Computerized Repair Information System:

Mitchell 1 “OnDemand5.com” internet-based system

End User may not sell, market or in any other manner distribute to any third party, or to any location, the System or any information contained in or derived from the System.

4. Concurrent Users – Number of licensed users:

Mitchell OnDemand5.com internet-based system **See Exhibit A: Pricing**

a. License Grant. In addition to the rights set forth in Section 2 of the Agreement, Mitchell hereby grants to End User a non-exclusive, non-transferable right and license to use the System on a network or on multiple, separate PCs for no more than the number of licensed concurrent users listed above.

In addition, End Users may not:

1. Allow data from the System to be made available to non-Users, except in print form only as incidental samples used for illustrative or demonstrative purposes.
2. Provide services for a fee using the System without prior written agreement from Mitchell.
3. Share user name or password with individuals other than parties to this contract.
4. For library users, make System available remotely to individuals outside the library branch.

b. Audit. End User grants Mitchell the right to enter the authorized location to conduct periodic audits of the authorized location to monitor and confirm use of the System.

- 5. Price and Payment Terms.** In consideration of the license fee set forth herein, End User shall pay to Mitchell the End User Fees set forth in EXHIBIT “A” incorporated herein in its entirety. The End User Fees do not include sales, use, excise, or other similar taxes, all of which are the obligation of End User.

- 6. Maintenance of Equipment and Software.** End User, and not Mitchell, shall bear sole responsibility to obtain, maintain and operate, or cause to be obtained, maintained and operated at its own expense, all equipment and non-Mitchell software that may be used in conjunction with the System.

- 7. Confidentiality.** (Proprietary Rights) End User acknowledges that the System, comprises information which constitutes a trade secret of Mitchell in which Mitchell has a proprietary interest. End User therefore agrees that no portion of the information constituting the System may be disclosed to others, copied, reproduced, disseminated, broadcast, displayed, reverse engineered, disassembled, compiled or used for any purpose or purposes other than as specifically contemplated by this Agreement in paragraph “2” above. End User shall exercise its best efforts to protect the System and to prevent its dissemination to unauthorized persons.

Furthermore, End User shall not assign, pledge, sublicense or permit any other use of the System without obtaining the prior written consent of Mitchell, which consent may be withheld at the sole discretion of Mitchell.
- 8. Mitchell System Modification.** Mitchell reserves the right to make changes in rules of operation, Security measures, accessibility, procedures, types of terminal equipment, types of system equipment, system programming languages and any other matters relating to the System and its use, without prior notice.
- 9. System Updates.** Mitchell may update the System data or software application from time to time during the course of this Agreement and shall make available any such updates to End User approximately four times per year during the term of the license or such other frequency as determined by Mitchell. Mitchell may take the System off-line and suspend User access as necessary to perform updates and/or system maintenance.
- 10. Warranty.** THE SYSTEM IS MADE AVAILABLE “AS IS” AND MITCHELL MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SYSTEM OR THE DATA , THE COMPUTER APPLICATION ALLOWING USE OF THE SYSTEM, OR ANY SERVICES PERFORMED BY ANY THIRD PARTY. IN PARTICULAR, MITCHELL DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. End User acknowledges and agrees that (i) Mitchell is not the manufacturer or distributor of any automotive repair parts referenced in the System, (ii) Mitchell makes no representations or warranties with respect to the quality or availability of such parts or the accuracy of the prices of such parts and (iii) if End User utilizes any non-Mitchell-supplied interface program to interface with the System, End User shall look solely to the vendor of such interface program with respect to any losses or damages caused by such interface program.
- 11. Limitation of Liability.** End User agrees that Mitchell shall not be liable to End User for any direct, indirect, special, incidental or consequential damages, including but not limited to loss of anticipated profits, in connection with or arising out of the use of the System and Data Updates. End User’s sole remedy upon breach of this Agreement by Mitchell, that Mitchell is unable to cure after a reasonable notice period, shall be termination of the Agreement and refund of unearned portions of the End User Fee. End User agrees to indemnify Mitchell and hold it harmless against all claims and damages, including without limitation, reasonable attorney’s fees arising out of End User’s use of the System and the Data, unless such claims or damages result from, or unless End User’s authorized use of the system has given rise to claims or damages based on the infringement of any copyright or other proprietary right of any Third party.
- 12. Termination.** The following actions by the End User shall constitute a breach of the Agreement and shall allow Mitchell to terminate the Agreement immediately upon notice: any use or dissemination of the System or Data Updates which is not expressly permitted herein; the appointment of a receiver to take possession of End User’s assets or the institution of bankruptcy by or against End User; dissolution or discontinuance of business operations of End User; or, failure to make timely payment to Mitchell of the End User Fee, including any renewal fee. Immediately upon the effective date of termination of this Agreement, End User shall cease using the System and all Mitchell documents and information pertaining thereto. Upon termination of this Agreement by Mitchell for any such cause, End User shall not be entitled to any refund of the End User Fees.

13. General Provisions.

13.1 Attorneys' Fees. If any action or proceeding is brought in connection with this agreement, the prevailing party shall be entitled to its attorney's fees and other costs and expenses incurred in such action or proceeding, including any appeals or petitions therefor.

13.2 Assignment. End User may not assign its rights or delegate its duties hereunder without first securing the permission to do so from Mitchell, which permission may be withheld at the sole discretion of Mitchell. For purposes of this section, the End User shall be deemed to have assigned this Agreement if there is, in the aggregate, a change of ownership of 25% or more of End User or a merger or combination of End User with another entity of business, whether End User is the surviving entity or not. Any such attempted conveyance shall be void and shall constitute a default entitling Mitchell to terminate this Agreement. Mitchell may freely assign its rights hereunder without securing End User's permission to do so.

13.4 Choice of Law and Forum. This Agreement shall be interpreted under and governed by the laws of the State of Arizona, without regard to its conflict of law rules. Any dispute(s) shall be subject to mandatory arbitration using the procedure and rules of the Arizona Rules of Civil Procedure. Any arbitration or action, if not resolved by the arbitration, shall be in Maricopa County Superior Court.

13.5 Waiver. Failure of either party hereto to enforce at any time any term of this Agreement shall not be a waiver of that party's right thereafter to enforce each and every term of this Agreement.

MITCHELL 1, 14145 DANIELSON STREET, POWAY, CA 92064

S027402/B0604225

Terms: NET 30

Vendor Number: ~~330734307-A~~ **W000001263 X**

Telephone Number: ~~858/391-5000~~ **888/724-6742**

Fax Number: ~~858/391-5266 858/746-8915~~ **858/391-5250**

Contact Person ~~Paul Myers Ryan Carnell (X-6233)~~ **Maria Garcia**

E-Mail Address (REP) paul.myers@mitchell1.com ryan.carnell@mitchell1.com
Maria.Garcia@mitchell1.com

Company Web Site: www.mitchell1.com

Contract Period: To cover the period ending ~~April 30, 2005~~ **2007.**